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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD JAMES SHAW,

Defendant and Appellant.

E035425

(Super.Ct.No. RIF099191)

**OPINION**

APPEAL from the Superior Court of Riverside County. Gordon R. Burkhart, Judge. Affirmed.

Mary Woodward Wells, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Jeffrey J. Koch, Deputy Senior Assistant Attorney General, and Robert M. Foster, Supervising Deputy Attorney General, for Plaintiff and Respondent.

Following a bifurcated jury trial, defendant was convicted of one count of petty theft with a prior (Pen. Code, § 666).<sup>1</sup> The trial court thereafter found true that defendant had previously been convicted of two prior strike convictions (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)) and that defendant had previously served three prior prison terms (§ 667.5, subd. (b)). After the trial court struck the prior prison term enhancements and denied defendant's motion to strike his prior strike convictions, defendant was sentenced to a total term of 25 years to life in state prison. Defendant's sole contention on appeal is that the trial court abused its discretion in denying his motion to strike his prior strike convictions. We find no abuse and will affirm the judgment.

## I

### FACTUAL BACKGROUND

On May 12, 2001, about 11:00 p.m., a manager at a Stater Brothers store in Moreno Valley saw defendant taking handfuls of eye solution worth \$95 from a shelf at the store and putting them in his jacket. After defendant took these items, he walked out of the store without paying for the items. When store personnel followed defendant out of the store, defendant attempted to run; however, they chased defendant and caught him in the parking lot.

As the store employees were waiting for police to arrive, defendant tried to escape and run away, but he was stopped. Police arrived at the scene, took a report, and transported defendant to the station. On the way to the police station, defendant told a deputy that all of the store employees were lying and claimed to have been set up. When

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

the deputy remarked that defendant should not have done what he did, defendant replied, “I know I shouldn’t have.”

## II

### DISCUSSION

Defendant argues the trial court abused its discretion by refusing to dismiss one of his prior strike convictions pursuant to *People v. Romero* (1996) 13 Cal.4th 497 (*Romero*). We disagree.

A trial court’s decision to not dismiss or strike a prior serious and/or violent felony conviction allegation under section 1385 is reviewed for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) “In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” [Citation.] Second, a ““decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377, quoting *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978, quoting *People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831 and *People v. Preyer* (1985) 164 Cal.App.3d 568, 573; see also *People v. Myers* (1999) 69 Cal.App.4th 305, 309.)

The California Supreme Court explained, “In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation].” (*People v. Carmony, supra*, 33 Cal.4th at p. 378, citing *People v. Langevin* (1984) 155 Cal.App.3d 520, 524 and *People v. Gillispie* (1997) 60 Cal.App.4th 429, 434.) Discretion is also abused when the trial court’s decision to strike or not to strike a prior is not in conformity with the “spirit” of the law. (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*); *People v. Myers, supra*, 69 Cal.App.4th at p. 310.)

But “[i]t is not enough to show that reasonable people might disagree about whether to strike one or more of his prior convictions. Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance. [Citation.]” (*People v. Myers, supra*, 69 Cal.App.4th at p. 310.) “Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*People v. Carmony, supra*, 33 Cal.4th at p. 378, quoting *People v. Strong* (2001) 87 Cal.App.4th 328, 338.)

The touchstone of the analysis must be “whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*Williams, supra*, 17 Cal.4th 148, 161; see also *People v. Garcia* (1999) 20 Cal.4th 490, 498-499.)

Defendant contends the court should have granted his request to strike one of his prior strike convictions because (1) his current conviction “involved no weapons, caused no property losses or bodily injury and constituted, at best, de minimus conduct”; (2) his two prior strike convictions were remote in time; and (3) he had positive prospects for the future, as his family had secured a steady job for him and a place in a church-related drug rehabilitation program upon his eventual release.

We cannot conclude the trial court abused its discretion in declining to strike one of defendant’s prior strike convictions. The relevant considerations supported the trial court’s ruling, and there is nothing in the record to show that the court declined to exercise its discretion on improper reasons or that it failed to consider and balance the relevant factors, including defendant’s personal and criminal background. In fact, the record clearly shows the court was aware of its discretion, aware of the applicable factors a court must consider in dismissing a prior strike, and appropriately applied the factors as outlined in *Williams*.

This case is far from extraordinary. Defendant has manifested a persistent inability to conform his conduct to the requirements of the law. Defendant’s past

criminal history was extensive and serious. He began the life of crime in 1981, when he was convicted of misdemeanor battery (§ 242) and placed on probation. Then, in 1983, he was convicted of misdemeanor burglary (§ 459) and again granted probation.

Thereafter, in 1984, he was convicted of his first strike offense, rape (§ 261) while armed with a firearm (§ 12022.3, subd. (b)), and sentenced to state prison for five years. He was paroled in 1986 and 1987, and each time he violated the terms and conditions of his parole and was returned to prison. In 1987, he was arrested for battery (§ 243, subd. (e)(1)). Subsequently, in 1993, he was convicted of his second strike offense, second degree robbery (§ 211), and sentenced to state prison for two years. Again, he was twice released on parole and twice violated the terms and conditions of his parole and was returned to state prison. In 1999, he was convicted of felony second burglary (§ 459) and sentenced to 16 months in state prison. He was released on parole but again violated the terms and conditions of his parole and was returned to state prison. Defendant thereafter committed the instant offense in May 2001.

Although a court may consider drug addiction as a mitigating factor (*People v. Garcia, supra*, 20 Cal.4th 490, 503), it may also consider a drug-addicted defendant's failure to address his addiction over a period of many years as a factor in the defendant's prospects for reoffending if the court were to strike a prior strike and impose a shorter sentence. (*People v. Williams, supra*, 17 Cal.4th at pp. 161, 163.) The record shows that defendant has had a cocaine-use problem since 1986. He had over 14 years from then until his conviction for the current offense to attempt to get his drug habit under control.

The court here could not overlook the fact defendant continued to commit criminal offenses and violate the terms and conditions of his parole even after repeatedly serving

time in prison. His conduct as a whole was a strong indication of unwillingness or inability to comply with the law. The record shows that defendant had a tendency for violence as evidenced by his rape conviction causing great bodily harm and his arrest for beating a woman in 1987. He has also shown a proclivity for weapons through his possession of a firearm and possession of knives on two separate occasions. Finally, he has shown his continual disregard for the law as evidenced by his numerous parole violations, contacts for failure to register as a sex offender, use of controlled substances, and false statements about his identity to peace officers. It is clear from the record that prior rehabilitative efforts have been unsuccessful for defendant. Indeed, defendant's prospects for the future look no better than the past, in light of defendant's record of prior offense and reoffense and his underlying drug addiction. All of these factors were relevant to the trial court's decision under *Romero*; contrary to defendant's contention, there is no indication from the record here that the court failed to consider the relevant factors or that it failed to properly balance the relevant factors or that it abused its discretion in determining that, as a flagrant recidivist, defendant was not outside the spirit of the three strikes law. (*Williams, supra*, 17 Cal.4th 148, 161.)

Indeed, defendant appears to be “an exemplar of the ‘revolving door’ career criminal to whom the Three Strikes law is addressed.” (*People v. Stone* (1999) 75 Cal.App.4th 707, 717.) Thus, given defendant's continuous criminal history, his numerous parole violations, the seriousness of the past offenses, and his seemingly dim prospects for rehabilitation and lack of meaningful crime-free periods, we cannot say that the trial court abused its discretion when it declined to dismiss one of defendant's prior

strike convictions. The trial court's decision not to strike defendant's priors was neither irrational nor arbitrary.

### III

#### DISPOSITION

The judgment is affirmed.

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RICHLI  
J.

We concur:

RAMIREZ  
P.J.

HOLLENHORST  
J.